VIRGINIA LAW REGISTER.

VOL. III.] DECEMBER, 1897. [No. 8.

GOVERNMENT BY INJUNCTION.*

The phrase "Government by Injunction," of late become so familiar, applies to a subject, the consideration of which opens up a field of thought and investigation so broad and far reaching that it is practically impossible, within the necessary limits of such a paper as this, to treat it with anything like the thoroughness which it deserves.

Although there have arisen in the various State courts cases involving injunctions similar to those which have attracted such universal attention in the Federal courts, yet it has been against the decisions of the latter courts that the criticism to which we shall allude has been chiefly directed, and it has been chiefly as descriptive of these that the phrase which forms our title has been coined. Jealousy of the enlargement of the Federal power is older than the Constitution itself, and even in those States and among those people who most favored the expansion of the power of the central government, there has been a generally expressed and very grave apprehension lest what is assumed to be a new and usurped jurisdiction of the Federal equity courts should result in seriously undermining the foundations of personal liberty in the United States.

The particular manifestation of Federal equity jurisdiction which has excited such adverse criticism has been seen in the application of the injunction to strikes, and difficulties arising from strikes.

The feeling of distrust of, and opposition to, all courts, and particularly to the Federal courts, resulting from the hasty conclusion that they have arbitrarily assumed an authority in these matters which does not belong to them, and, through sheer love of power and desire to favor the rich, have conspired to oppress the people, is widespread enough to constitute a grave danger to our institutions. These sentiments have been fostered, through the press and otherwise, by many

* A paper read by Wm. G. Peterkin, Esq., of the Parkersburg (W. Va.) bar, before the West Virginia Bar Association, held at Morgantown, W. Va., Nov. 3, 1897.

men of many minds; some carried away by the natural sympathy excited by the distressed condition of many laboring men, and the assumption that the courts have unconscionably allied themselves together to further oppress the oppressed; some doubtless influenced by no higher motive than the desire to gain votes for their own political party and to score a point against their political opponents; some, assuming that the usurpation which they have heard so often charged actually exists, have joined in the clamor on general principles; others, sincerely convinced of the illegal and inequitable character of the acts complained of, join in opposing what they conceive to be a very dangerous attack on the liberties of the people.

It is astonishing to read such attacks on the courts and judges as have appeared in reputable newspapers during the last few months; in unreasoning and unreasonable violence they have put to the blush the veriest anarchist of them all.

It well becomes us, then, to investigate carefully and impartially the origin and growth of that jurisdiction, the exercise of which in certain instances has given rise to the feeling of which we have spoken; the particular application of that jurisdiction to labor troubles; the proceedings for the punishment of contempts; the dangers threatened thereby, and the means whereby those dangers may be best and most honorably averted. Time forbids, however, anything but a cursory examination of these very important and interesting questions.

While it has been a maxim even from the earliest times that the equitable jurisdiction of chancery extended only to such matters as were not remediable by the law, yet for many years after this already permissive jurisdiction was permanently established by Edward III, there was the greatest latitude in determining its extent, and the chancellors seem to have been governed largely by their own consciences and their own ideas of right and justice, rather than by any fixed rules or well defined regulations. As a result of the enlargement of the jurisdiction of equity we find, from the reign of Richard II through that of Henry VI, numerous petitions from the House of Commons to the king, protesting against the chancellor's deciding upon matters which were remediable at common law. It is unnecessary here, however interesting it might be, to trace the gradual delimination of the jurisdiction of the courts of equity, and the processes by which their early latitude was restricted. Lord Nottingham in 1676 laid down the rule that a chancellor was to be governed by a legal conscience (*civilis et politica*) rather than by a personal con-

science (*naturalis et interna*); and even before his time, the multitude of precedents, already collected, had resulted in certain defined rules by which the courts of equity were guided. The principle which governs equity jurisprudence as finally settled, is thus stated by Mr. Adams:

"It does not create rights which the common law denies, but it gives effectual redress for the infringement of existing rights, where, by reason of the special circumstances of the case, the redress at law would be inadequate."

Mr. Pomeroy, however, distinguishes certain rights which the doctrines of equity jurisprudence alone create and recognize.

It is well said that the central principles of equity being founded upon the "the eternal verities of right and justice," rather than upon "arbitrary customs and rigid dogmas," it is far more elastic and more capable of expansion and extension than the common law; it therefore continually grows and expands, not arbitrarily, but in the direction of what have long since become well defined and established principles. Lord Chancellor Cottenham observed that:

"It is the duty of the courts of equity (and the same is true of all courts and of all institutions), to adapt its practice and course of proceedings, as far as possible, to the existing state of society, and to apply its jurisdiction to all those new cases which, from the progress daily making in the affairs of men, must continually arise, and not from too strict adherence to forms and rules established under very different circumstances, decline to administer justice, and to enforce rights, for which there is no other remedy."

The Constitution and laws of the United States have recognized equity as a part of the national jurisprudence. The equitable jurisdiction of the Federal courts extends throughout the Union, howsoever State laws may affect the various State courts, and is "identical or equivalent in extent with that possessed by the English High Court of Chancery at the time of the Revolution," excepting those "peculiar administrative functions held by the chancellor as representative of the crown in its character of *parens patriae*."

The remedy by injunction was borrowed by the early chancellors from the Roman law. Mr. Pomeroy, in his great work on Equity Jurisprudence, states as a general principle that,

"Whenever a right exists or is created by the ownership of property or otherwise, cognizable by law, a violation of that right will be prohibited, unless there are other considerations of policy or expediency which forbid a resort to this prohibitive remedy."

These considerations are governed by, and depend upon, that fundamental principle which marks the limits of equitable jurisdiction

generally, namely the inadequacy and insufficiency of the legal remedy. In the concise language of Mr. Adams, therefore, we say:

"Whenever damage is caused or threatened to property, admitted or legally adjudged to be the plaintiff's, by an act of the defendant, admitted or legally adjudged to be a civil wrong, and such damage is not adequately remediable at law, the inadequacy of the remedy at law is a sufficient equity, and will warrant an injunction against the commission or continuance of the wrong."

An ounce of prevention is worth a pound of cure. And in restraining the breach of contracts, in proper cases; in abating nuisances; in restraining *ultra vires* or illegal acts on the part of corporations; in preventing waste; in preventing irreparable torts, and in many other ways, the remedy by injunction has come to be one of the most useful in our jurisprudence. Its practical abolition, as is threatened in some States, would be a very serious blow to the administration of justice between man and man.

It is generally said that equity will not restrain the commission of a crime, and so far as it goes this is true; that is, equity will not restrain the commission of a crime *merely because it is a crime*—the punitive remedy at law being deemed adequate. On the other hand, equity will not refuse to restrain an act which would be a nuisance or an irreparable injury to property or civil rights simply because that act is a crime. The punishment of the wrong-doer is no compensation to the victim; and when adequate damages cannot be recovered at law, or when no damages can compensate for the injury, a man would be left without protection unless equity should interpose and prevent the commission of the act. "The penalty for the contempt in violating an injunction is no substitute for, and no defense to, a prosecution for criminal offences committed in course of such violation." The functions of the injunction are preventive merely. Many State statutes make special provisions for the abatement, by injunction, of certain disreputable places as nuisances, notwithstanding the fact that the keeping of these places is a crime. The principle itself seems so plain, and the result of its exercise so beneficent, that it is a surprise that any should question or oppose it. Yet we hear judges inveighed against for "presuming" to enjoin the commission of acts which constitute irreparable injuries to property, and are at the same time confessedly violations of the law.

The pertinent question suggests itself, should a man be heard to plead his own crime in order to oust the jurisdiction of a court of equity? We can see but one answer to such a question.

Says the Court of Civil Appeals of Texas, in *State* v. *Patterson*, 37 S. W. 478:

"In extending such protection [by injunction] it [equity] may prevent a crime; but, as no one has a right to commit crime, no one should be heard to complain that he is restrained from its commission, when such restraint has been exercised in the jurisdiction of a court for the purpose of preventing him from irreparably injuring another in his property or civil rights."

A well considered case on this subject is *Columbian Athletic Club* v. *State*, 143 Ind. 98 (40 N. E. 914; 28 L. R. A. 727; 2 Am. and Eng. Dec. in Eq. 340),.where is laid down the principle that "Injunction will lie at the suit of the State against a corporation when it is misusing and abusing the corporate franchise and privileges, and is maintaining its property as a nuisance, though its acts also constitute a crime," and where numerous authorities are cited in its support.

Many similar instances might be cited showing the manifold and manifest usefulness of the injunction as: To restrain the obstruction of navigable rivers; to restrain a railroad company from taking land for purposes not within its power, or from taking land contrary to the provisions of its charter, or from obstructing a highway, or from illegally constructing or extending its tracks; to restrain a municipal corporation from making illegal appropriations or payments, from negotiating an illegal loan or from issuing unauthorized bonds; to restrain the keeping of a house of ill fame (*Cranford* v. *Tywell*, 128 N. Y. 341); to restrain the pollution of the waters of a stream (*Barrett* v. *Mount Greenwood Cemetery Association*, 159 Ill. 185); to restrain the principals from proceeding with a contemplated prize fight (*In Re Corbett*, 35 Am. L. Reg. 100).

In the cases above mentioned the peculiar and exclusive advantages of the remedy by injunction are seen readily and at once; and although many of the acts enjoined were punishable as crimes, we have not heard that outcry against the interference of the courts of equity which has greeted what may be called the "labor cases," although the use of the injunction in the one class of cases deserves as much to be called "government by injunction" as it does in the other.

There have been few more conspicuous instances of this use of the injunction than the successful endeavor of the Arkansas authorities to prevent the Corbett-Fitzsimmons prize fight from taking place in that State. Few legal proceedings have in years attracted so much attention as did those to prevent this much-advertised fight, and I do not remember to have heard the Arkansas court attacked and abused

for having used the equitable writ of injunction to accomplish in the premises what the law was powerless to do, for it was universally admitted that to place the expected participants and their aiders under the highest peace bond allowed by law would have been utterly futile as a preventive measure.

Said Chancellor Martin in overruling the demurrer in the Corbett-Fitzsimmons case:

"The very objects of government are to restrain men's passions, to bridle improper and illegal impulses; to protect them in their civil and political rights of life, limb and property, to subserve the general welfare, and to induce or make them, if necessary, respect the rights of others. 'Tis true, a court of equity under our system of laws, cannot administer punitive justice, except for contempts, but it may preventive justice in proper cases, and I feel sure that if there were more preventive justice administered, a vast deal of misery would be spared the innocent. . . . . Conceding that courts of equity have no power to enforce the criminal statutes of the State, and no jurisdiction to enjoin the commission of crimes ordinarily, yet where the crime arises from, or is a constituent part of a public nuisance, they should not fail to exercise their extraordinary powers to abate the nuisance, and in doing this they may, by proper orders, prevent the commission of the crime."

The principle that equity will enjoin an act, for the commission of which the actor could be punished, when the injury from the commission of the act would be irreparable, was recognized by Chief Justice Marshall in 1824, in the case of *Osborn* v. *Bank of U. S.*, 9 Wheat. 738, 843–5.

It appears to be now well settled that equity, at the suit of a public officer, has jurisdiction to restrain an individual or a corporation from committing acts which are "injurious to the rights of the public or contravene public policy, even though they may constitute a crime, and be cognizable by the courts of law as such." Such relief will also be granted to a private person who alleges and proves a special injury to himself. This doctrine has long been recognized by the Federal courts, as may be seen from the following cases decided by the Supreme Court of the United States: *Georgetown* v. *Alex. Canal Co.*, 12 Pet. 97 (1838); *Pennsylvania* v. *W. & B. Bridge Co.*, 13 How. 518; *Miss. & Mo. R. R. Co.* v. *Ward*, 2 Black, 485; *Corsaw Min. Co.* v. *South Carolina*, 144 U. S. 550.

In the last case Mr. Justice Harlan quotes the Massachusetts court as "observing that the preventive force of a decree in equity, restraining the illegal acts before any mischief was done, would give a more efficacious and complete remedy than an indictment or proceedings

under the statute for the abatement of the nuisance;" and, speaking by the same Justice, the court says: "Proceedings at law or by indictment can only reach past or present wrongs done by appellant and will not adequately protect the public interests in the future."

This question is well considered in the able opinion of Mr. Justice Brewer in the *Debs Case*, 158 U. S. 564.

Other cases in which similar conclusions are reached could be cited from Alabama, Illinois, Iowa, Massachusetts, New Hampshire, New Jersey, New York, Texas, and perhaps other States. The cases are collected in note to 35 Am. St. Rep. 670–681.

It appears, therefore, that the interference of a court of equity to enjoin acts which are crimes, when those acts threaten the destruction of, or irreparable injury to, property or civil rights, is not only reasonable, but is sanctioned by abundant authority, both State and Federal.

It is said, sometimes with great bitterness, that the application of the injunction to strikes is an innovation, This is, of course, true, in so far as strikes, as we know them now, are themselves innovations, and true only so far; for the courts have applied old and established principles to new conditions. For instance, the first American case in which the word "boycott" is used seems to be *State* v. *Glidden*, 55 Conn. 46 (8 Atl. 890; 3 Am. St. Rep. 23), decided in 1887; yet it was in accordance with well settled principles that the injunction was granted in that case.

There have been some score or more of cases in the Federal courts in which the injunction was used against strikers, and although it does not come within our purpose to examine these cases in detail, yet a reference to several of them will be of interest.

It was held in 1887, by the Circuit Court of the United States for the Southern District of New York, in *Old Dominion Steamship Co.* v. *McKenna*, 30 Fed. Rep. 48, that for outsiders to procure workmen employed upon terms satisfactory to them, to quit work in a body in order to inflict injury upon the employer until he should accede to their demands, constitutes in law a malicious and illegal interference with the employer's business which is actionable. Often the destruction of a man's business cannot be measured in damages, and we may safely say that in all these cases damages could not have been made even after being awarded, the defendants being invariably insolvent; the remedy at law being thus totally inadequate, the old first principle applies, and equity takes hold, and by an injunction prevents the commission of the threatened act.

See also *Coeur d' Allene Consolidated & Mining Co.* v. *Miner's Union*, 51 Fed. 260 (1892).

In *Casey* v. *Typographical Union*, 45 Fed. Rep. 135 (1891), it was held that a combination to boycott a newspaper for refusing to unionize its office is illegal and unlawful and will be enjoined. Surely no action at law could compensate for the injury flowing from such a "boycott," and the granting of the injunction was in accordance with long established principles.

This case was followed in the exhaustively considered one of *Barr* v. *Essex Trades Council* (N. J.), 30 Atl. 881.

Nor were the cases arising during the recent miners' strike new, in that the strikers were enjoined from congregating near the works of an employer in pursuance of a combination or conspiracy for the purpose of intimidating and threatening his employees and exposing them to jeers and contumely, and so "persuading" them to leave their employment. Not only were the acts resulting from such combinations or conspiracies oft-times nuisances in themselves, but if unimpeded they would doubtless have led to the compulsory cessation of the employer's business and to the infliction of irreparable injury upon him, and therefore were properly enjoined—assuming a proper showing of facts, and proper proceedings had.

A large number of cases from the various State courts bearing upon this phase of the question are collected and commented upon in the case of *Steel & Wire Co.* v. *Murray*, 80 Fed. 811, the opinion in which shows that abundant precedent exists for what has been condemned as a recent innovation. See also the case of *Vegelahn* v. *Guntner* (Mass.), 44 N. E. 1077, 35 L. R. A. 722, in which "picketing" by strikers was enjoined.

Nor can we believe that the constitutional right of free speech was abridged or endangered when there was prohibited, not the peaceable assembling of men for the discussion of grievances, but the congregating and marching of a crowd upon the public thoroughfare near the property of another, or upon that other's property, for the very purpose of interfering with his business and of forcing themselves and their arguments upon his employees, unwilling listeners though they be, and practically coercing them to leave their employment. It would seem almost farcical, if it were not so serious a matter, to claim for such acts as these, the protection of the constitutional guarantee of "free speech."

On the general question of obstruction of highways, Justice Brewer pertinently remarks in his opinion in the *Debs Case:*

"It surely cannot be seriously contended that the court has jurisdiction to enjoin the obstruction of a highway by one person, but that its jurisdiction ceases when the obstruction is by a hundred persons."

Under the Act of Congress of July 27, 1890 (under which the anti-railroad pooling decision was rendered), declaring illegal and punishing combinations in restraint of commerce among the States, and conferring jurisdiction on the United States Circuit Courts to prevent violations of the act, those courts have jurisdiction to restrain such violation by injunction. *U. S.* v. *Alger*, 62 Fed. 824; *U. S.* v. *Elliott*, 64 Fed. 27.

The matter of interstate commerce is one entrusted by the Constitution to the care of Congress, and yet, when acting under the express provisions of the act above mentioned, Federal judges have been attacked as unprincipled "usurpers."

It is a well established principle that in some cases of trespass and of nuisance an individual is permitted by the law to prevent the one and abate the other by force, and surely no one should complain if the individual or the government prefer the peaceful process of a court of equity. We venture to say that the terrible tragedy enacted in Pennsylvania a short time ago would have been avoided had a court of equity been appealed to; certain it is that no such difficulty occurred in any place where the aid of the courts, State or Federal, was invoked.

The use of the injunction in labor cases seems to have been restricted rather than expanded since 1868, when in England, in *Spinning Co.* v. *Riley*, 6 L. R. Eq. 551 (the first reported labor case in which the injunction was used), the publication of a libel was enjoined, an extent to which our courts have refused to go, as not being sanctioned by principle.

To sum up in the language of Judge Wm. A. Woods:

"No decision of the Supreme Court, or of any of the United States Circuit Courts of Appeals, touching the subject of injunction, can be said to be founded on or to involve any new doctrine, or any application of established principle which was new, save in the circumstances and conditions brought under consideration, and with two or three exceptions, the same is true of the recent Circuit Court decisions." Yale Law Journal, May, 1897.

An examination of the cases decided in the Federal courts bearing upon this question will show that the courts have clearly recognized

the individual and collective right of the employees to cease work when they saw fit, undeterred by judicial process. This is, after all, but a recognition of the old rule that equity will not specifically enforce a contract for personal service, and therefore will not enjoin the breach of such a contract; this rule seems to have been violated by the United States Circuit Court for the Eastern District of Wisconsin, in *Farmer's Loan & Trust Co.* v. *Northern Pac. R. R. Co.*, 60 Fed. Rep. 803; but to that extent the decision has been annulled by the Circuit Court of Appeals for the Seventh Circuit, in *Arthur* v. *Oakes*, 24 U. S. App. 239 (63 Fed. 310; 11 C. C. A. 209). This is but an example of what has been so well said by Judge Woods, that the scope of equity jurisdiction "has been enlarged and modified to meet the changing conditions of business and civilization, and it is only natural that there should have been instances in which jurisdiction has been exercised in excess of rightful power, but when error of that kind has occured, it has been promptly corrected, either by direct appeal or by force of contemporary and more authoritative decision, and it is safe to say that no essential departure from recognized principles has become abiding or permanent."

Objections have been made to the summary punishment of contempts committed in the violation of injunction orders.

Again this is no new exercise of jurisdiction.

The power of courts to punish disobedience of their orders has existed from time immemorial, it has been co-existent with the courts themselves, and is absolutely necessary to their existence; it is, further, within that "due process of law" required by the Constitution, which has been well defined as "such an exertion of the powers of government as the settled maxims of law sanction, and under such safeguards for the protection of individual rights as these maxims prescribe for the class of cases to which the one in question belongs."

The Supreme Court of Mississippi has said:

"The power to fine and imprison for contempt from the earliest history of jurisprudence, has been regarded as a necessary incident and attribute of a court, without which it could no more exist than without a judge. It is a power inherent in all courts of record, and co-existing with them by the wise provisions of the common law. A court without the power effectually to protect itself against the assaults of the lawless, or to enforce its orders, judgments or decrees against recusant parties before it, would be a disgrace to the legislation, and a stigma upon the age, which invented it." *Watson* v. *Williams*, 36 Miss. 331.

So the Massachusetts Court says:

"The summary power to commit and punish for contempts tending to obstruct

or degrade the administration of justice is inherent in courts of chancery and other superior courts, as essential to the execution of their powers and the maintenance of their authority, and is part of the law of the land, within the meaning of Magna Charta, and of the twelfth section of our Declaration of Rights." *Cartwright's Case*, 114 Mass. 230.

In his opinion in the *Debs Case* Justice Brewer cites numerous Federal cases, as stating the same principle—a principle too axiomatic to need any authority in its support.

If contempts were made triable by a jury, the courts would be paralyzed; for suppose, as Judge Woods suggests (*ubi supra*), the jurors summoned should refuse to attend, it would be necessary to summon other jurors to try them, and if they should refuse, others must be summoned to try them, and so on *ad infinitum;* a court of equity having no jury, its contempt cases would have to be sent to a law court, for trial when they could be reached in the course of business, pending which, proceedings in the court of equity must be suspended.

But after these legal difficulties and objections are considered, other practical objections present themselves, which demand that all reasonable restrictions and safeguards be placed upon the use of the injunction, in such cases as those to which we have addressed ourselves.

The power reposed in the courts of chancery is of vast extent, and, such is the weakness of human nature, it is liable to be sometimes abused, and when abused to work great oppression. This abuse should be guarded against with the most sedulous care, not only on account of the injustice in the particular case, but because of its affording a handle for those who, for one reason or another, are always ready to attack the courts and judges, and to stir up discontent among the people. It may be superfluous to say that the law should be followed with the greatest strictness, but in cases such as we have been considering, it is of first importance that the courts should see that every requirement of the law is complied with, with scrupulous exactness. They should avoid even the shadow of appearing to overstep the limits set to their jurisdiction by law.

For example, the United States Circuit Courts are given authority by Act of Congress to grant preliminary injunctions in certain extreme cases without notice. This provision, useful and necessary as it sometimes is, may be made an instrument of oppression and injustice unless the judge acts with the greatest care and circumspection. In such cases the court should carefully regard the interests of the absent defendants, and should never grant an injunction without notice, unless

the required "irreparable injury from delay" is clearly shown beyond a doubt, and the day set for a hearing should never be postponed beyond the earliest date.

We have too much confidence in our courts of last resort to feel apprehension that there will ever be a permanent enlargement of the jurisdiction of the courts of equity, uncontrolled by law and unsanctioned by principle; but there is at all times a possibility that in the mistaken acts of individual judges the proper jurisdictional limits may be overstepped. While, ordinarily, such mistakes, even if uncorrected by an appellate court, might have no result beyond the particular case in which they occurred, yet in seasons of popular discontent, even an isolated mistake goes far to increase those bitter feelings of which we spoke at the outset, and tends to undermine that perfect confidence in the integrity and fairness of our courts which is one of the chief foundation stones of our government, and which among a large class of our people seems now to be seriously threatened.

The fact that the injunctive process has in so many cases issued from the Federal courts has made the cry of "Government by Injunction" more potent than it would otherwise have been, in exciting the fears of conservative men. There are not wanting cases, however, in which the State authorities themselves have been responsible for the resort to the Federal courts, the complainants often having no confidence in the ability and willingness of the local authorities to effectually cope with the difficulties; and sometimes, as for instance in the Chicago riots of 1894, this lack of confidence would seem to have been justified.

It has been said that the so-called "usurpations" of the courts are but blazing the way to revolution, but I do not believe that in the sober second thought of the American people any such result is contemplated or threatened. There is danger, however, that some State legislatures, in an effort to restrict the power of the courts, may practically abolish the useful writ of injunction, and so necessitate a still more frequent resort to the Federal courts; a result to be deplored by those who, like the writer, believe that Federal assistance, even in courts, should be sought only as a last resort. In this, as in all cases when a people, greatly stirred up, attempt to right real or imaginary wrongs, there is danger lest the remedy adopted be worse than the disease.

Efforts have been made to have some legislation by Congress limiting the jurisdiction of the Federal equity courts in matters involving injunctions, but it may well be doubted whether Congress has any

authority to do this, as article III, section 2, of the Constitution provides that the judicial power of the Federal courts shall extend to "all cases in law and equity" arising under the Constitution, the laws and treaties of the United States.

Changes could, however, be made in the law in regard to the punishment for contempts. The incongruity of a trial by jury in such cases has already been alluded to. However, those proceedings might well be made compulsory which even now should be followed in all courts, and so far as the writer knows have been generally followed; that is, "in cases of a contempt committed out of the presence of the court there should be a formal procedure upon affidavit showing the facts supposed to constitute the contempt, to which the defendant should be allowed to make answer, and that the trial should be upon evidence adduced in open court;" moreover, an appeal might be allowed in all cases, and a limit set upon the punishment to be inflicted.

As to the so-called "blanket" or "omnibus" injunctions, it stands to reason that no man can be in contempt by violating an order, notice of the existence of which has not been brought home to him; and if any man has been punished for so doing, he has been unjustly punished; the court had no jurisdiction of him, and if imprisoned he was entitled to his release on *habeas corpus*.

Section 16, Act of 1789 (Rev. Stat., sec. 723), provides that "suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law." It has been held (*Baker* v. *Biddle*, 1 Baldwin, 405) that this was an absolute limitation on the jurisdiction, and that any decree beyond this jurisdiction was void. Disobedience of a void injunction order is no contempt, and an examination of the validity of the order, as depending upon the jurisdiction of the court, when the question is brought before the higher court, as may even now be done by *habeas corpus*, is a valuable safeguard against injustice committed by a transgression of jurisdiction.

In the famous case of *In Re Ayers*, 123 U. S. 443 (1887), the Supreme Court, speaking by Mr. Justice Matthews, declared it to be well settled that while "the exercise of the power of punishment fo contempt of their orders, by courts of general jurisdiction, is not subject to review by writ of error or appeal to this court," yet, when "a court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void,"

and that "when the proceedings for contempt in such a case result in imprisonment this court will, by its writ of *habeas corpus*, discharge the prisoner."

In time of riot or disorder, when property and civil rights are threatened or endangered, it is, of course, the duty of the authorities to restore order, regardless of cost, and to remove the threatened danger by whatever means are in their power, which being done they should consider the cause which provoked the passions of the people, sometimes unreasonable though they be.

There can be no doubt that much of the discontent which seems to smoulder among our laboring men is caused by the seemingly insatiate and pitiless greed of some great capitalists and corporations. The tales of vast and rapidly accumulated fortunes of these later days sound strangely in the ears of men who are struggling on scanty wages to support their wives and children; and when organized labor, too often stirred up by unscrupulous agitators, inaugurates a struggle for the betterment of its condition, and the men, in the effort to compel a compliance with their demands, commit acts which bring them within the restraining jurisdiction of a court of equity, it is hardly unnatural that they should believe, especially when encouraged so to do by many who should know better, that the strong arm of the law which compels them to cease is guided by, and is but a creature of, the very power against which they are struggling.

We cannot afford to allow this belief to grow; it appears to be already too widespread, unreasonable though we may believe it to be.

It would therefore seem that the best solution of this entire question is offered by what has been so often suggested, namely, a compulsory arbitration of all disputes arising between employers and employed. The use of the strictly legal, but to so many obnoxious, remedy by injunction, would thus be generally avoided in labor disputes, and with it the most prolific cause of the bitter feelings spoken of.

This plan is open to the objection that by it certain men will be required to surrender, to a greater or less degree, their personal right to manage their own affairs as seems best to them. But it may well be asked whether the time has not come when, in this particular, a measure of this right must be surrendered for the common good. In such a critical period as that through which we are passing, it becomes every patriotic citizen to yield somewhat of that which is strictly his right, if too close adherence to it endangers the social fabric.

It may be added that matters would be very much helped if a greater

sense of responsibility were felt, and more care exercised by those whose duty it is to disseminate and comment upon the news. The instance here under our own observation last summer has not been the only one, when an untrue and misleading report of facts, and the expresson of a too hasty opinion thereon, have stirred up feelings and excited animosities which no amount of subsequent correction could atone for.

I am conscious that this has been a very imperfect and incomplete discussion of a very broad subject, but such as it is it has not been without avail if it has aided in any degree in showing that the so-called "usurpations" of the judges have not been usurpations at all, but that the application of the injunction to prevent violations of law and the consequent irreparable injury to property and civil rights, incident to strikes, has been in accordance with well-known principles of equity jurisprudence; and that if any defects are inherent in that system, or if any objections are properly applicable to it, they should be met and corrected in some other way than by that unreasoning abuse and, I may say, vilification, of the judiciary, which in these latter days seem to have become favorite pastimes with so many.

UNPUBLISHED LETTER OF CHANCELLOR JAMES KENT.*

NEW YORK, October 6th, 1828.

DEAR SIR.—Your very kind & friendly letter of the 15th ult. was duly received, and also your argument in the Case of *Ivey* v. *Pinson*. I have read the Pamphlet with much interest & pleasure. It is composed with masterly ability, of this there can be no doubt, & without presuming to give any opinion on a great case, still *Sub Judice*, & only argued before me on one side, I beg leave to express my highest respect for the law reasoning & doctrine of the argument, & my admiration of the spirit, & eloquence which animate it. My attention was very much fixed on the perusal, & if there be any lawyer in this State who can write a better argument in any point of view I have not the honor of his acquaintance.

As to the rest of your letter concerning my life & studies, I hardly know what to say, or to do. Your letter & argument, & character & name have impressed me so favorably, that I feel every disposition to